

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Larry A. Gilbertson

Patent No.: 7,575,917 (Appln. No: 10/821,711)

Issued: August 18, 2009 (Filed: April 8, 2004)

For: DNA CONSTRUCTS AND METHODS TO  
ENHANCE THE PRODUCTION OF  
COMMERCIALY VIABLE TRANSGENIC  
PLANTS

Group Art Unit: 1638

Examiner: David H. Kruse

Atty. Dkt. No.: MONS:140US

Conf. No. 1699

**CERTIFICATE OF ELECTRONIC TRANSMISSION**  
37 C.F.R. § 1.8

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Web on the date below:

October 16, 2009

Date

/Marshall P. Byrd/

Marshall P. Byrd

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**

**UNDER 37 C.F.R. §1.705(d)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition under 37 C.F.R. §1.704(d) to correct an error in patent term adjustment (PTA) for the above referenced U.S. patent. Specifically, the U.S. Patent and Trademark Office (PTO) erred in calculating that the patent is entitled to only 312 days of PTA. In accordance with 35 U.S.C. 154(b), the patent is entitled to 777 days of PTA as detailed below. This request is timely filed within two months of the issuance of the subject patent.

### **REMARKS**

U.S. Patent No. 7,575,917 received a patent term adjustment of 312 days. However, Applicants' calculations indicate that the actual term should be 777 days. A timeline is included herewith in support of these calculations. Specifically, it appears that the PTO failed to account for prosecution delays under both 35 U.S.C. §154(b)(1)(A) "A delay," which guarantees prompt PTO responses, and 35 U.S.C. §154(b)(1)(B) "B delay," which guarantees no more than 3 years of application pendency.

As indicated in the attached timeline, total PTO "A delay" was 474 days beginning 14-months after the filing of the application on 6/8/2005 and ending on 9/25/2006 when the first Office Action was issued. Total PTO "B delay" was 466 days beginning on 4/9/2007 after the application had been pending for three years and ending on 7/18/2008 when a Request for Continued Examination was filed. The A and B delays on the part of the PTO did not overlap and should be counted cumulatively. See, *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 USPQ 2d 1538 (D.D.C., September 30, 2008). Thus, total PTA for the patent should be calculated by adding PTO "A delay" time (474 days) plus PTO "B delay" time (466 days) and subtracting Applicants' delay time (163 days), for a total of 777 days of PTA. The instant patent application was not subject any specific expiration date by terminal disclaimer. Accordingly, Applicants respectfully request that the PTA indicated in the issued U.S. Letters Patent be amended to indicate 777 days.

The instant request is submitted along with the fee prescribed under 37 C.F.R. §1.18(e) and provides all factual information stipulated by 37 C.F.R. §1.705(b)(2). Should it be determined that any additional fees are due in connection with this request, the Commissioner is authorized to deduct said fees from *Sonnenschein Nath & Rosenthal* Deposit Account No.: 19-3140/MONS:140US.

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Respectfully submitted,  
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Reg. No. 62,454  
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Date: October 16, 2009

**Patent Term Adjustment Time Line**  
**U.S. Patent No. 7,575,917**  
**Attorney Docket No. MONS:140US**

**Adjustment Under 35 U.S.C. 154(b)(1)(A)**

Document	Date	Applicant Effect on Patent Term (# of Days)	PTO Effect on Patent Term (# of Days)
Application Filed	04/08/2004		
Restriction Requirement (R.R.)	09/25/2006		+474
Response to R.R.	10/24/2006		
Office Action (O.A.)	01/25/2007		
Response to 01/25/2007 O.A.	06/25/2007	-61	
Office Action	09/07/2007		
Response to 09/07/2007 O.A.	12/07/2007		
Final Office Action (F.O.A.)	03/18/2008		
Response to 03/18/2008 F.O.A.	07/18/2008	-30	
Office Action	10/14/2008		
Response to 10/14/2008 O.A.	01/14/2008		
Supplemental Response	03/27/2009	-72	
Notice of Allowance	04/10/2009		
Issue fee paid	07/10/2009		
Patent issues	08/18/2009		
Total		-163	+474

**Adjustment Under 35 U.S.C. 154(b)(1)(B)**

Application Filed	04/08/2004		
Request for Continued Examination	07/18/2008		+466
Total			+466